

Dec 08, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES EDWARD KENSLER,

Movant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

No. 2:19-CV-0262-WFN

ORDER DENYING § 2241 PETITION

Before the Court is Mr. Kensler's Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. ECF No. 1. The Court issued an order asking Mr. Kensler to show cause why his § 2241 Petition should not be construed as a § 2255 motion and dismissed. ECF No. 5. In the Order, the Court explained that unless a Petition challenges the "*manner, location or conditions of the execution of his sentence*" the motion should be brought under § 2255. *Id.* This means that to make a successful claim under § 2241, Mr. Kensler must challenge the terms of his incarceration, not the legal proceedings leading to his incarceration. In his response to the Order to Show Cause, Mr. Kensler reasserts complaints about the proceedings that occurred prior to his service of sentence, but insists that he would like to pursue a § 2241 because he intends to challenge the effectiveness of his counsel via a § 2255 at a later date. Due to Mr. Kensler's clear intent to preserve his right to file a § 2255, the Court will not construe the § 2241 as a § 2255 motion. However, as Mr. Kensler's § 2241 does not assert a claim regarding the conditions, manner, or location of his incarceration, he fails to state a claim so the Petition must be dismissed. The Court has reviewed the file and the briefing and is fully informed. Accordingly,

IT IS ORDERED that:

1. Mr. Kensler's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, filed July 26, 2019, **ECF No. 1**, is **DENIED**. The case is **DISMISSED with prejudice**.

1 2. The Court further certifies that an appeal from this decision could not be taken in
2 good faith and there is no basis upon which to issue a certificate of appealability. A
3 certificate of appealability is therefore **DENIED**.

4 The District Court Executive is directed to file this Order and provide a copy to *pro*
5 *se* Movant. Judgment shall be entered for the United States of America and the file shall be
6 **CLOSED**.

7 **DATED** this 8th day of December, 2020.

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WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

12-07-20